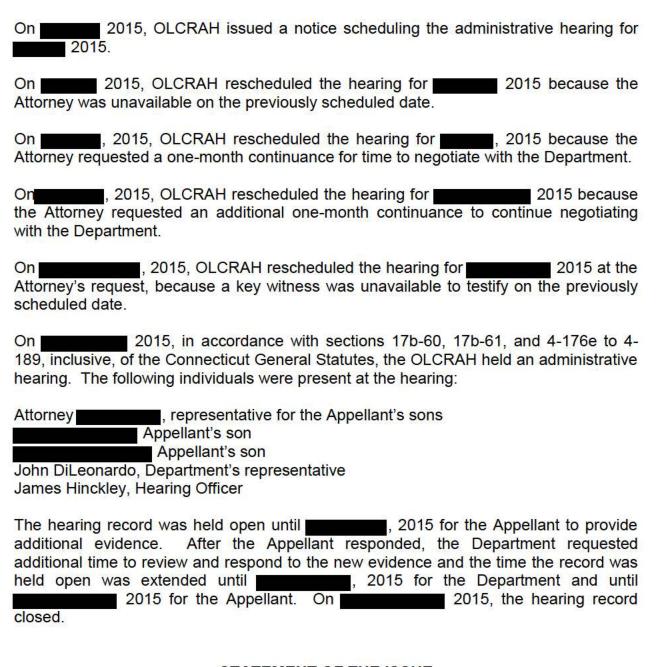
STATE OF CONNECTICUT DEPARTMENT OF SOCIAL SERVICES OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS **55 FARMINGTON AVENUE** HARTFORD, CT 06105-3725

. 2015

Signature Confirmation
Client ID# Request # 685593
NOTICE OF DECISION
PARTY
C/O Attorney
PROCEDURAL BACKGROUND
On 2015, the Department of Social Services (the "Department") sent (the "Appellant") authorized representative, Attorney (her "Attorney") a Final Decision Notice that she had transferred \$37,493.00 to become eligible for Medicaid, and that the Department was imposing a penalty period of ineligibility for Medicaid payment of long term care services beginning 2014 and ending 2015.
On 2015, the Department sent the Attorney a notice of action ("NOA") that the Appellant's application for Medicaid was denied for the period from 2014 through 2014 because of the penalty period previously imposed, and was denied for the period after 2014 because the Appellant died on that date and was no longer living in a nursing home.
On, 2015, the Attorney requested an administrative hearing on behalf of the Appellant to contest the Department's penalty determination.
On Regulations, 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") sent the Attorney a notice that he is not authorized to request a fair hearing for the Appellant unless he is so designated by the executor of the Appellant's estate, or by a child of the Appellant.
On, 2015, OLCRAH received a Designation of Authorized Representative for Administrative Hearing from the Appellant's son.

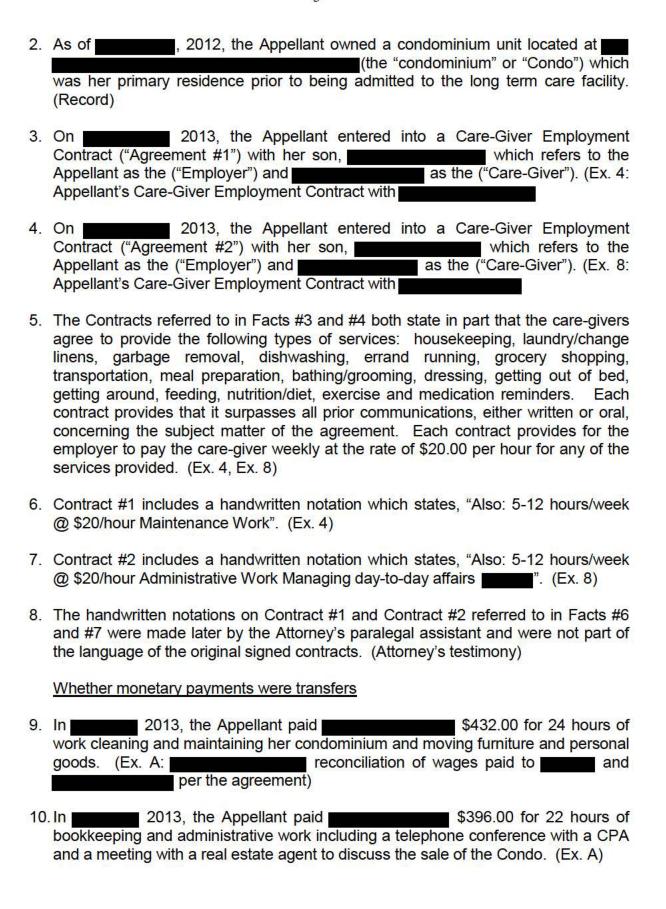


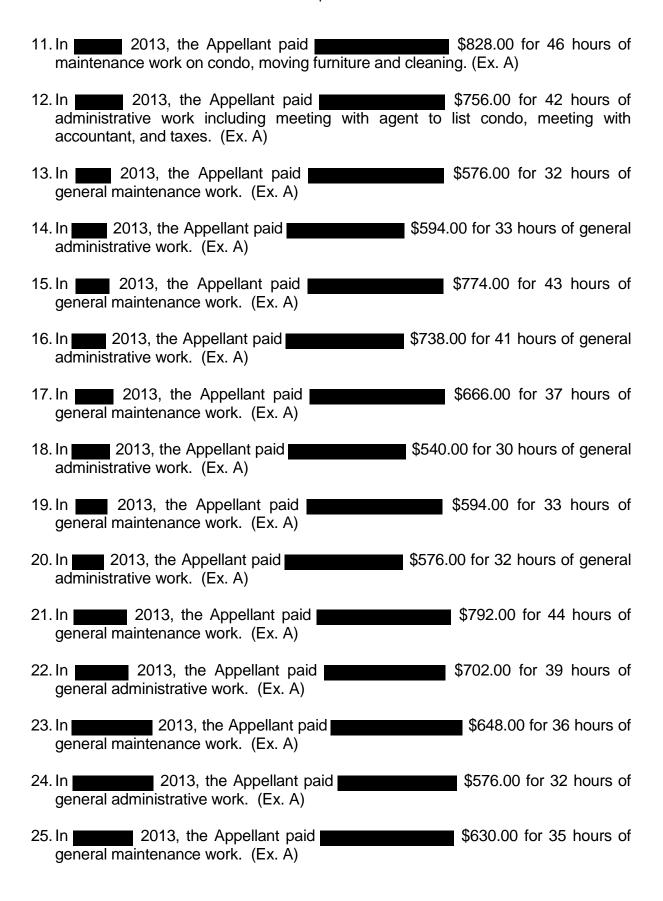
STATEMENT OF THE ISSUE

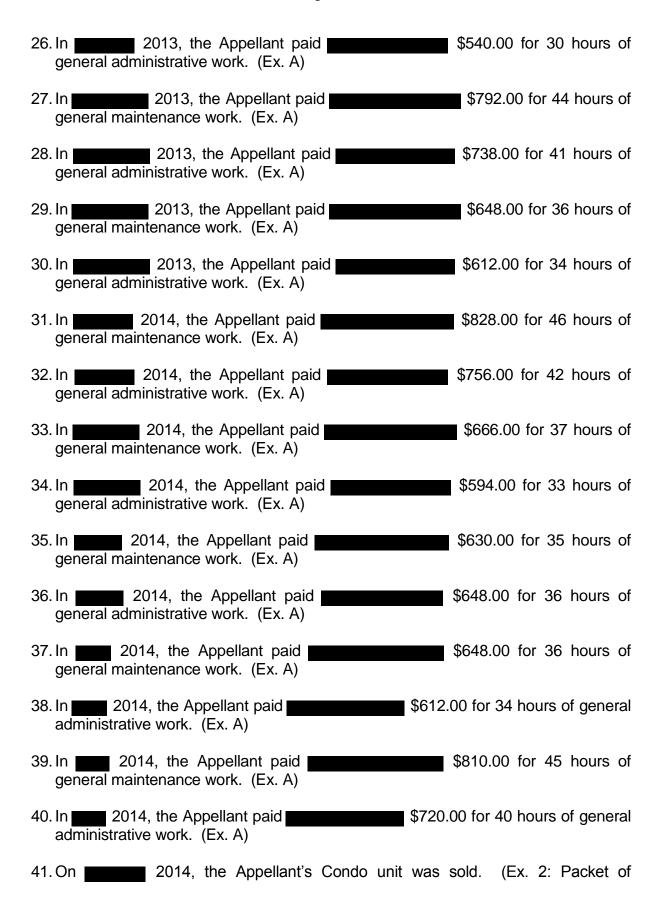
The issue is whether the Department's decision to impose a Transfer of Assets ("TOA") penalty beginning 2014 and ending 2015 for \$37,493.00 in transfers by the Appellant, is correct.

FINDINGS OF FACT

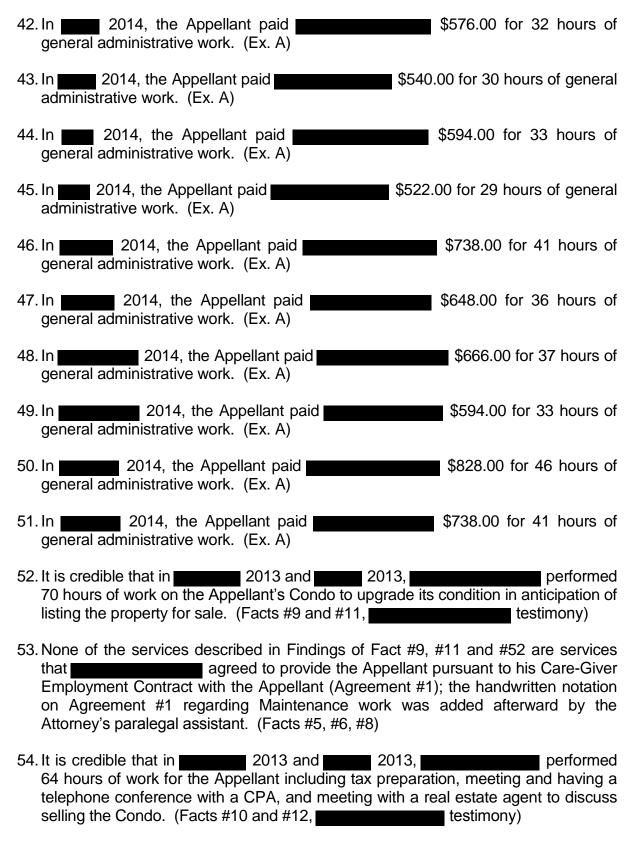
1. On 2012, the Appellant entered Masonicare, a long term care facility.

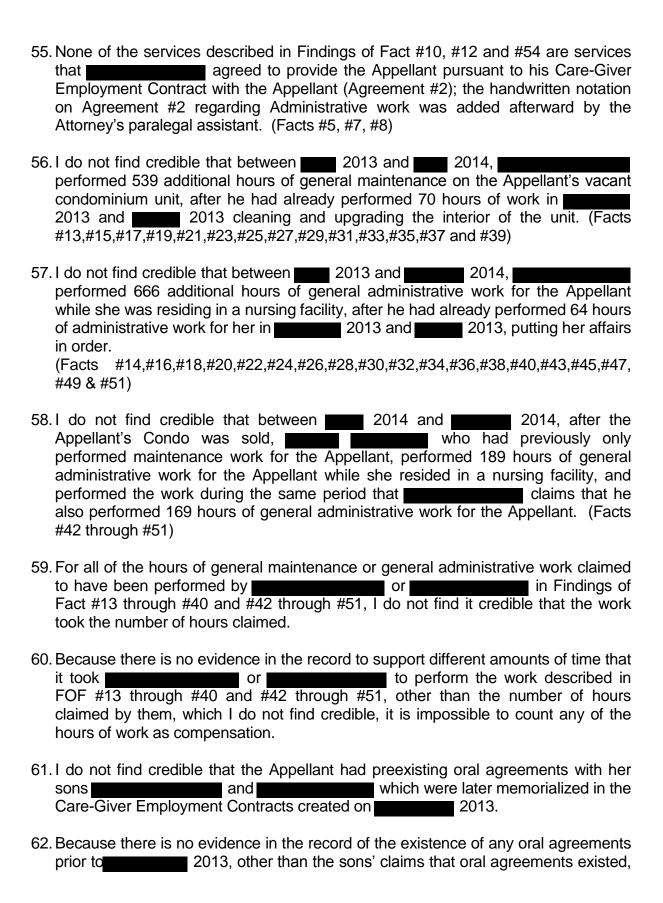






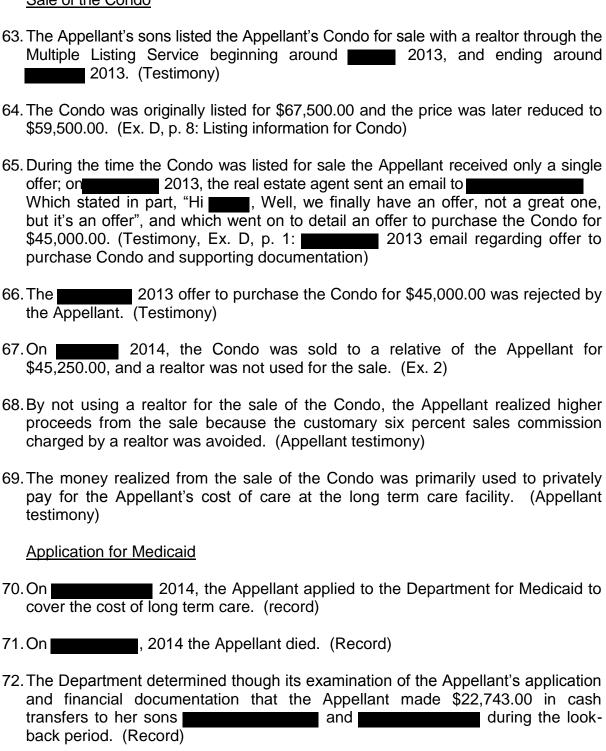
documents related to sale of Condo)

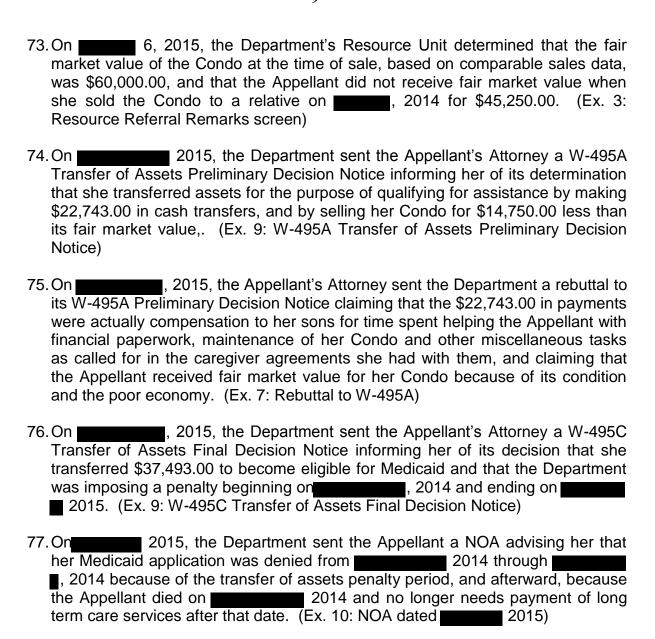




which I do not find credible, it is impossible to count any compensation for payments claimed to be pursuant to any preexisting oral agreement.

Sale of the Condo

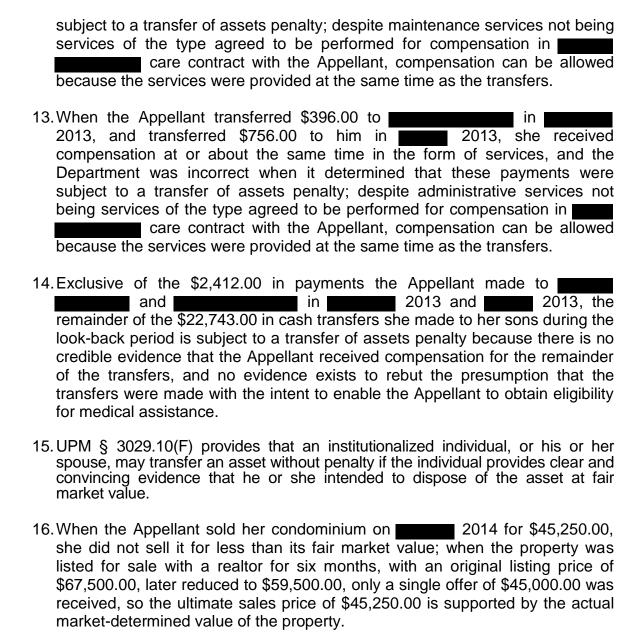




CONCLUSIONS OF LAW

- 1. The Department is the state agency that administers the Medicaid program pursuant to Title XIX of the Social Security Act. The Department may make such regulations as are necessary to administer the medical assistance program. Conn. Gen. Stat. § 17b-2; Conn. Gen. Stat. § 17b-262
- 2. The Department is the sole agency to determine eligibility for assistance and services under the programs it operates and administers. Conn. Gen. Stat. § 17b-261b(a)

- 3. The Department shall grant aid only if the applicant is eligible for that aid. Conn. Gen. Stat. § 17b-80(a)
- 4. The Department uses the policy contained in Chapter 3029 of the Uniform Policy Manual to evaluate asset transfers if the transfer occurred on or after 2006. UPM § 3029.03
- 5. There is a period established, subject to the conditions described in chapter 3029, during which institutionalized individuals are not eligible for certain Medicaid services when they or their spouses dispose of assets for less than fair market value on or after the look-back date specified in UPM 3029.05(C). This period is called the penalty period or period of ineligibility. UPM § 3029.05(A)
- 6. The look-back date for transfers of assets is a date that is sixty months before the first date on which both the following conditions exist: 1) the individual is institutionalized; and 2) the individual is either applying for or receiving Medicaid. UPM § 3029.05(C)
- 7. The look-back date for the Appellant is ______, 2009.
- 8. Any disposition of property made on behalf of an applicant or recipient or the spouse of an applicant or recipient by a guardian, conservator, person authorized to make such disposition pursuant to a power of attorney, or other person so authorized by law shall be attributed to such applicant, recipient, or spouse. Conn. Gen. Stat. §17b-261(a); Uniform Policy Manual ("UPM") § 3029.05(D)
- 9. Any transfer or assignment of assets resulting in the imposition of a penalty period shall be presumed to be made with the intent, on the part of the transferor or the transferee, to enable the transferor to obtain or maintain eligibility for medical assistance. This presumption may be rebutted only by clear and convincing evidence that the transferor's eligibility or potential eligibility for medical assistance was not a basis for the transfer or assignment. Conn. Gen. Stat. § 17b-261a(a)
- 10. Compensation in exchange for a transferred asset is counted in determining whether fair market value was received. UPM § 3029.30
- 11. When an asset is transferred, compensation is counted when it is received at the time of the transfer or any time thereafter. UPM § 3029.30(A)



- 17. The Department was incorrect to impose of transfer of assets penalty of \$14,750.00, or the difference between the \$60,000.00 value it estimated for the Condo and its \$45,250.00 sales price, because clear and convincing evidence exists that the Condo was not disposed of for less than its fair market value.
- 18. The Appellant transferred \$20,331.00 for the purpose of establishing eligibility for Medicaid (eliminating any penalty for selling the Condo for less than fair market value, and reducing the amount of the \$22,743.00 in cash payments to her sons that is subject to a penalty by the \$2,412.00 in payments for which she received fair market compensation [\$22,743.00, minus \$2,412.00, equals \$20,331.00])

- 19.UPM § 3029.05 provides that there is a period established, subject to the conditions described in this chapter, during which institutionalized individuals are not eligible for certain Medicaid services when they or their spouses dispose of assets for less than fair market value on or after the look-back date specified in 3029.05 C. This period is called the penalty period, or period of ineligibility.
- 20.UPM § 3029.05 (E)(2) provides that the penalty period begins as of the later of the following dates: the date on which the individual is eligible for Medicaid under Connecticut's State Plan and would otherwise be eligible for Medicaid payment of the LTC services described in 3029.05 B based on an approved application for such care but for the application of the penalty period, and which is not part of any other period of ineligibility caused by a transfer of assets.
- 21. The Appellant is subject to a penalty period beginning 2014, the date that the Appellant was otherwise eligible for Medicaid payment of long-term care services.
- 22. UPM § 3029.05 (F) provides in part that the length of the penalty period consists of the number of whole and/or partial months resulting from the computation described in 3029.05 F. 2. The length of the penalty period is determined by dividing the total uncompensated value of all assets transferred on or after the look-back date described in 3029.05 C by the average monthly cost to a private patient for LTCF services in Connecticut. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application.
- 23. The average monthly cost of LTCF services in Connecticut as of the month of the Appellant's application was \$11,851.00.
- 24. The Appellant is subject to a penalty period of 1.72 months after dividing the \$20,331.00 uncompensated value of the transferred assets by the \$11,851.00 average monthly cost of LTCF services.

DISCUSSION

While the length of the TOA penalty period is reduced as a result of this decision, the Appellant remains ineligible for Medicaid for payment of Long Term Care because the end date of the reduced penalty period, 2014, still extends beyond the Appellant's 2014 date of death.

DECISION

The Appellant's appeal is **GRANTED IN PART AND DENIED IN PART.**

<u>ORDER</u>

The Department shall re, 2014 and er	• •	nt's TOA penalty ■ 2014.	y to 1.72 mo	nths, beginning
, zorrana or		20111		
		James Hincl Hearing Office	•	

cc: Lisa Wells, SSOM, New Haven Brian Sexton, SSOM, New Haven Bonnie Shizume , SSPM, New Haven

RIGHT TO REQUEST RECONSIDERATION

The Appellant has the right to file a written reconsideration request within 15 days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the Appellant will be notified within 25 days of the request date. No response within 25 days means that the request for reconsideration has been denied. The right to request a reconsideration is based on §4-181a(a) of the Connecticut General Statutes.

Reconsideration requests should include <u>specific</u> grounds for the request: for example, indicate <u>what</u> error of fact or law, <u>what</u> new evidence, or <u>what</u> other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Legal Counsel, Regulations, and Administrative Hearings, 55 Farmington Avenue, Hartford, CT 06105.

RIGHT TO APPEAL

The Appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision or 45 days after the Agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue, Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The 45 day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than 90 days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or his designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the Appellant resides.